

Nos. 13-17102, 13-17154

IN THE
**United States Court of Appeals
For The Ninth Circuit**

FACEBOOK, INC.,
Plaintiff-Appellee,

v.

POWER VENTURES, INC.

&

STEVEN SURAJ VACHANI,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of California
Case No. 5:08-cv-05780-LHK, The Honorable Lucy Koh

PARTIES' STIPULATION TO CORRECT THE RECORD

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PARTIES' STIPULATION TO CORRECT THE RECORD

Pursuant to Federal Rule of Appellate Procedure 10(e)(2)(A), the parties stipulate as follows:

1. Plaintiff-Appellee Facebook, Inc., lodged the Expert Report of Bob Zeidman and Lawrence Melling in the district court, pursuant to then-Chief Judge Ware's standing order requiring that expert reports be lodged but not filed.

2. This report was before the district court when it considered the merits of Facebook's claims. The district court specifically mentioned this report in its order on the parties' cross-motions for summary judgment. *See* Dkt. No. 275, at 15-16 & 15 n.37.

3. This report should therefore be considered part of the record on appeal. *See Riordan v. State Farm Mut. Auto. Ins. Co.*, 589 F.3d 999, 1004 (9th Cir. 2009) (holding that a document that "was never 'filed' but was merely 'lodged' by the parties with the district court" was part of the record on appeal where court records left no doubt that it was before the district court).¹

¹ Because this report was submitted to the district court under seal, the parties will forward it to this Court in paper copy only. Facebook's motion to unseal the portion of this report that will be included in Facebook's Supplemental Excerpts of Record is filed simultaneously with this stipulation.

CONCLUSION

For the foregoing reasons, the record should be corrected to reflect that Expert Report of Bob Zeidman and Lawrence Melling is part of the record on appeal.

Respectfully submitted,

Dated: May 13, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

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/s/ Amy Sommer Anderson

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/s/ Steven Vachani

Steven Vachani
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Counsel for Power Ventures, Inc. and Mr. Vachani have consented to Facebook's ECF filing of this document.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 13, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Eric A. Shumsky

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